STATE OF MICHIGAN

COURT OF APPEALS

JUDY L. M. BROOKS,

Plaintiff-Appellant,

v

MARK D. BROOKS,

Defendant-Appellee.

UNPUBLISHED
June 7, 2002

No. 237550
Wayne Circuit Court
Family Division
LC No. 00-021786-DM

Before: Holbrook, Jr., P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce entered on July 2, 2001 and a final post-judgment order regarding child support entered on October 15, 2001. We affirm in part, reverse in part, and remand for further proceedings.

I

Plaintiff first argues that the trial court erroneously ordered rehabilitative spousal support in the amount of $20,000 a year for three years only. Initially, we reject plaintiff's claim that the trial court failed to make adequate findings of fact regarding this issue. MCR 2.517(A)(2); *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). The trial court sufficiently identified the factors that it was considering in determining the award of spousal support. The trial court noted that both parties were forty-eight years old, had been married for eighteen years, both parties were able to work although the court acknowledged plaintiff's medical condition makes working difficult for her, that the parties have lived an above-average lifestyle, and the court accounted for the division of the marital assets. These factors are proper and sufficient when determining spousal support. *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996).

Upon considering the relevant factors, and giving due deference to the trial court's findings regarding plaintiff's ability to work, we conclude that plaintiff has not shown that the trial court's decision to award rehabilitative spousal support of $20,000 a year for three years, a time period that corresponds with the number of years that the parties' youngest child will remain a minor, was inequitable. *Id.* Because the spousal support award is subject to the contingency of death or remarriage, however, thus making it in the nature of maintenance payments rather than a property distribution, plaintiff should be accorded the opportunity to petition for modification of the award, if warranted, as provided by MCL 522.28. See generally, *Staple v Staple*, 241 Mich App 562; 616 NW2d 219 (2000); cf. *Wiley v Wiley*, 214 Mich App

614; 543 NW2d 64 (1995). Thus, while we uphold the trial court's decision to award spousal support of $20,000 a year for three years, subject to death or remarriage, we order that the language providing that "spousal support shall be forever barred" thereafter be stricken, and the trial court shall modify the judgment of divorce to allow plaintiff to file a petition for modification of spousal support in accordance with MCL 552.28.

II

Plaintiff next claims that the trial court erred in determining defendant's child support obligation for the parties' one minor child. Defendant's child support obligation was entered in an order dated October 15, 2001, and set at $150 a week, based on defendant's income, the amount of weekly spousal support being paid, and that defendant would have 149 overnight visitations annually. The amount was set pursuant to the friend of the court child support formula. MCL 552.605. The trial court may deviate from the formula if it provides reasons why application of the formula would be unjust or inappropriate. MCL 552.605(2).

Here, plaintiff only claims that the trial court's decision on May 2, 2001, June 12, 2001, and July 2, 2001, are devoid of any findings made by the trial court; however, plaintiff neglects to acknowledge the October 12, 2001, hearing where the trial court adopted the friend of the court's recommendation. Plaintiff does not argue how application of the child support formula is unjust or inappropriate. Consequently, plaintiff has provided no basis for reversal regarding the child support order.

III

Plaintiff next challenges the trial court's award of "COBRA health care" for plaintiff. As plaintiff points out in her reply brief, however, the judgment of divorce does not provide for COBRA[1] benefits. The judgment establishes a means for plaintiff to receive coverage for health care benefits if defendant receives such coverage through his business, Taylor & Associates, Inc. The trial court specifically stated on the record that if Taylor & Associates paid health insurance benefits for defendant, then those benefits would be available to plaintiff as well.

Plaintiff's sole argument is that the trial court's rulings are devoid of any findings of fact or conclusions of law on this issue. We disagree and find that the trial court made adequate findings regarding health insurance. We conclude that plaintiff has not established any basis for reversal concerning the trial court's award of health insurance benefits.

IV

Plaintiff next argues that the trial court erred by not making findings of fact concerning the identification, evaluation, and division of assets in the marital estate. Plaintiff specifically argues that the trial court failed to make any factual findings regarding the value of the marital home and the value of defendant's business, and failed to indicate why the marital estate was being divided that way it was. Plaintiff's argument in this regard attacks the trial court's decision to order that the marital home be sold, that plaintiff was awarded a one-half interest in

[1] See the Consolidated Omnibus Budget Reconciliation Act, 29 USC 1162 *et seq*.

defendant's business with no real control or interest, and that a receiver should not have been appointed when the parties never requested one.

Identification of the parties' marital and separate estates is generally a trial court's first consideration in dividing property. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). At trial, plaintiff's expert valued defendant's interest in Taylor & Associates at $731,000. By contrast, defendant's expert valued defendant's interest at $316,000. The trial court did not attempt to value the business. Instead, the trial court ruled that half of defendant's interest in the business would be awarded to plaintiff, although defendant would make all decisions as to the running of the business. When responding to plaintiff's counsel's question about the value of the business, the trial court stated that "whatever the value is, they will share equally in that value." The judgment of divorce specifies the following:

> A. Defendant Husband is awarded 100% of his shares of stock in Taylor (Defendant Husband's shares, the "Stock").
>
> B. Plaintiff Wife shall have all rights and shall be responsible for all obligations as if she held one-half of the Stock, such that she shall be subject to the risks and benefits of being a shareholder of Taylor.
>
> C. Notwithstanding all of the above, Defendant Husband shall have the sole right to make decisions regarding the Stock, including the right to vote, sell or hold such shares.
>
> D. The Defendant Husband shall provide Plaintiff Wife with quarterly notice of distributions, allocations, quarterly tax estimates, payment of income taxes, and payment of expenses, if any, regarding the Stock.

Plaintiff also questioned the appointment of a receiver, apparently done to protect her interest in Taylor & Associates. The trial court appointed a receiver "for the sole purpose of acting as mediator in the event there is a disagreement between the parties regarding [defendant's] decision concerning distributions and allocations to [defendant], based upon the Stock or the sale of the Stock." On appeal, plaintiff objects to the appointment of the receiver because one was not requested below and because of the expense associated with the receiver.

With regard to the marital home, the trial court ordered that the home would be sold with a listing price of $325,000 or higher as mutually agreed to by the parties and that the parties would split the net proceeds.[2] At trial, plaintiff's expert testified that the marital home was valued at $256,000, and defendant's expert testified that the home was valued at $325,000.[3] During the hearing regarding the proposed judgment, plaintiff indicated that she was attempting to arrange for financing to buy defendant's share. Defendant requested that a value be assigned

---

[2] The judgment of divorce does not specify how the proceeds would be divided; that is, whether the proceeds would be divided equally or by some other percentage.

[3] We note that, at this juncture, these appraisal values are now one year old and may well be inaccurate.

so that negotiations could take place and also indicated an interest in buying the home. It does not appear from the record that either party wanted to sell the home.

With regard to defendant's business, we are unable to determine exactly what the trial court awarded to plaintiff. Plaintiff was not actually awarded any stock, nor was she awarded any income or profits. The meaning of plaintiff having all rights and obligations "as if" she held one-half of the shares is unclear. Therefore, the award to plaintiff with regard to Taylor & Associates appears to be illusory. If it was the trial court's intention to award to plaintiff one-half of the value of the business, then the business should have been valued and plaintiff should have been awarded a monetary amount. Instead, the terms of the judgment of divorce appear to give plaintiff no real interest.

It is apparent that the trial court attempted to divide equally the marital assets; however, it may have been impractical to divide defendant's share of the stock in his business, a closely held corporation. Certainly, the trial court has broad discretion in fashioning its dispositional rulings and there is no strict mathematical formulation. *Sparks v Sparks*, 440 Mich 141, 158-159; 485 NW2d 893 (1992). Therefore, we remand to the trial court to valuate the business and award a monetary amount to plaintiff. In order to achieve its desired goal of equally dividing the marital assets, by way of example, the trial court could permit plaintiff to keep the marital home, especially to not disrupt the minor son's schooling, and the amount owed to plaintiff from the business could be offset from the equity in the home owed to defendant. Likewise, the trial court will have to valuate the marital home to accomplish this set off. Further, such an offset would eliminate the need for a receiver.

Therefore, we vacate the property award with regard to defendant's business and the marital home and remand for the trial court to valuate both those assets and divide them accordingly.

V

Plaintiff next argues that the trial court erred by not awarding her attorney fees and expert witness fees. Contrary to plaintiff's argument, the trial court's ruling, examined in the context of its other rulings and findings, is sufficient for our review. The trial court initially required defendant to pay $5,000 in a pretrial order toward attorney fees, which he did. Additionally, plaintiff received a total of $1,500 a week while the case was pending in temporary spousal support and child support. Plaintiff has not shown that the trial court abused its discretion by refusing to award attorney fees beyond the $5,000 amount that was awarded in the pretrial proceedings. See generally, *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997); cf. *Stackhouse v Stackhouse*, 193 Mich App 437, 445-446; 484 NW2d 723 (1992); *Kurz v Kurz*, 178 Mich App 284, 298; 443 NW2d 782 (1989).

VI

Lastly, although we are remanding for further proceedings as set forth in this opinion, we see no need to order reassignment to a different trial judge. Plaintiff has not demonstrated that the trial court was biased or prejudiced against her or her attorney. *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999); *Cochrane v Brown*, 234 Mich App 129, 134; 592 NW2d 123 (1999).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs under MCR 7.219(A), neither party having prevailed in full.

/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder